

# **MISSOURI COURT OF APPEALS WESTERN DISTRICT**

**LAURIE FREEMAN and MARTIN REID, Individually and on Behalf of Themselves  
and All Persons Similarly Situated,**

**Appellants,**

**v.**

**HAWTHORN BANK,**

**Respondent.**

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**DOCKET NUMBER WD79534**

**Date: April 18, 2017**

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Appeal from:  
Jackson County Circuit Court  
The Honorable Charles H. McKenzie, Judge

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Appellate Judges:  
Division Two: Cynthia L. Martin, Presiding Judge, Lisa White Hardwick and Alok Ahuja,  
Judges

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Attorneys:  
James P. Frickelton, Edward Robertson, III, Kirk Goza, Leawood, KS for appellants.  
John C. Aisenbrey, George Francis, KCMO for respondent; Michael J. Schmid,  
Jefferson City for MO Bankers Association.

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

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Themselves and All Persons Similarly Situated**

**Appellants,**

**v.**

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WD79534

Jackson County

Before Division Two: Cynthia L. Martin, Presiding Judge, Lisa White Hardwick and Alok Ahuja, Judges

Laurie Freeman and Martin Reid (collectively, "Appellants") appeal from the judgment in favor of Hawthorn Bank ("Hawthorn") on their class action petition alleging that Hawthorn's automated debit card overdraft program violates Missouri's usury law. Appellants contend the circuit court erred in holding that Hawthorn's debit card overdraft fee is a statutorily-permitted service charge imposed on a deposit account and, therefore, is not subject to the state's usury law.

**AFFIRMED.**

Division Two holds:

The circuit court did not err in entering judgment in favor of Hawthorn on Appellants' class action petition. The evidence established that Hawthorn provides services to its customers in connection with the debit card transaction overdraft fee and that the fee is imposed on checking accounts, which are deposit accounts. Therefore,

the plain language of Section 362.111.1, RSMo 2013, permits Hawthorn to impose the fee and exempts the fee from the state's usury law.

Opinion by: Lisa White Hardwick, Judge

**April 18, 2017**

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**